United Nations S/2016/493

Security Council

Distr.: General
31 May 2016

Original: English

United States of America: draft resolution

The Security Council,

Recalling its previous resolutions and statements on South Sudan, in particular resolutions 2057 (2012), 2109 (2013), 2132 (2013), 2155 (2014), 2187 (2014), 2206 (2015), 2241 (2015), 2252 (2015), 2271 (2016) and 2280 (2016),

Expressing grave alarm and concern regarding the conflict between the Government of the Republic of South Sudan and opposition forces which emanated from internal political disputes among the country's political and military leaders that has resulted in great human suffering, including significant loss of life, displacement of more than 2 million people, and the loss of property, further impoverishing and disadvantaging the people of South Sudan,

Welcoming the signing of the "Agreement on the Resolution of the Conflict in the Republic of South Sudan" ("the Agreement") as contained in S/2016/654 and *further welcoming* the formation of the Transitional Government of National Unity (TGNU) on 29 April 2016 as a vital step towards the full implementation of the Agreement and *also welcoming* the remarks of both President Salva Kiir and First Vice-President Riek Machar on the need to ensure reconciliation and a spirit of cooperation,

Urging the TGNU to fully and unconditionally implement all parts of the Agreement, uphold the permanent ceasefire and address the economic crisis and dire humanitarian situation,

Welcoming the establishment of the Joint Military Ceasefire Commission and its work towards implementing ceasefire and transitional security arrangements, and the commencement of the Strategic Defence and Security Review, and *noting* the positive meeting and dialogue of military and police representatives in Juba at the conference held on 12-14 May 2016,

Welcoming the support of the Joint Monitoring and Evaluation Commission (JMEC) and the African Union through its High Representative for South Sudan, former President Alpha Oumar Konaré, for the formation of the TGNU and *calling upon* the TGNU to extend its full cooperation and support to the JMEC Chair, former President Festus Mogae, for implementation of the Agreement,

Strongly condemning past and ongoing human rights violations and abuses and violations of international humanitarian law, including those involving targeted killings of civilians, ethnically targeted violence, extrajudicial killings, rape, and other forms of sexual and gender-based violence, recruitment and use of children in

Please recycle

armed conflict, abductions, enforced disappearances, arbitrary arrests and detention, violence aimed at spreading terror among the civilian population, and attacks on schools, places of worship and hospitals, as well as United Nations and associated peacekeeping personnel and objects, by all parties, including armed groups and national security forces, as well as the incitement to commit such abuses and violations, *further condemning* harassment and targeting of civil society, humanitarian personnel and journalists, and *emphasizing* that those responsible for violations of international humanitarian law and violations and abuses of human rights must be held accountable, and that South Sudan's TGNU bears the primary responsibility to protect its population from genocide, war crimes, ethnic cleansing, and crimes against humanity,

Expressing deep concern over the large-scale displacement of persons and deepening humanitarian crisis, *noting* the finding in the final report of the South Sudan Panel of Experts (S/2016/70), established pursuant to paragraph 18 of resolution 2206 (2015), that obstruction of humanitarian access is widespread and that parts of numerous states of South Sudan are entirely blocked from humanitarian relief, *stressing* the responsibility borne by all parties to the conflict for the suffering of the people of South Sudan, and in this regard, *recognizes* that in accordance with the Agreement, the TGNU shall review the Non-Governmental Organizations Bill, and submit the legislation to a process of public consultation to ensure that such legislation is consistent with international best practice and with its commitment to create an enabling political, administrative, operational and legal environment for the delivery of humanitarian assistance and protection,

Commending United Nations humanitarian agencies and partners for their efforts to provide urgent and coordinated support to the population, *calling upon* all parties to the conflict to allow and facilitate, in accordance with relevant provisions of international law and United Nations guiding principles of humanitarian assistance, the full, safe, and unhindered access of relief personnel, equipment and supplies to all those in need and the timely delivery of humanitarian assistance, in particular to internally displaced persons and refugees, *condemning* all attacks against humanitarian personnel and facilities and *recalling* that attacks against humanitarian personnel and depriving civilians of objects indispensable to their survival may amount to violations of international humanitarian law,

Taking note of the December 2015 UN Panel of Experts' Report (S/2016/70), which, inter alia, notes violations of the Agreement's permanent ceasefire by the parties, including after the signing of the Agreement, the ever-worsening humanitarian catastrophe, widespread human rights violations and abuses, and government violations of the United Nations Mission in South Sudan (UNMISS) status-of-forces agreement, and *noting* the finding in the Panel of Experts Final Report that, while it is not a violation of the sanctions measures established pursuant to resolution 2206 (2015), both sides have continued to acquire arms and military equipment after the signing of the Agreement and *noting* that such acquisitions undermine the implementation of the Agreement by facilitating violations of the permanent ceasefire,

Welcoming the resolve indicated in the IGAD Council of Ministers Communiqué of 31 January 2016, *urging* the TGNU to abide by and take no action inconsistent with the Intergovernmental Authority on Development (IGAD) 30-31 January 2016 communiqué, which was subsequently endorsed by the parties and JMEC, on the

issue of the Presidential Decree on the creation of 28 new states and calling on the United Nations Security Council to support consequences in the event the South Sudanese parties fail or refuse to implement the Peace Agreement, and *further welcoming* its demand that the parties to the conflict take immediate action to ensure unconditional humanitarian access across the country,

Welcoming also the 29 January 2016 AU PSC communiqué which, inter alia, called on all South Sudanese parties to abide scrupulously by the terms of the Agreement and implement faithfully its provisions, called on all African Union (AU) Member States and partners to fully support the implementation of the Agreement, and urged the international community to lend support towards the implementation of the Agreement in a coordinated manner,

Welcoming the 26 September 2015 AU PSC communiqué, which, inter alia, expressed the AU's commitment, both through the High Representative for South Sudan and the AU High Level ad hoc Committee on South Sudan, to fully play its role in the implementation process, together with IGAD, the United Nations and other concerned international stakeholders,

Also welcoming the 22 May 2015 AU PSC press statement, which, inter alia, underlined the particular relevance of resolution 2206 (2015), in order to support the search for an inclusive and sustainable peace in South Sudan,

Recalling the AU PSC Communiqués dated 12 June 2014, 5 December 2014 and 29 January 2015 which, inter alia, stressed that sanctions will be imposed against all parties that continue to obstruct the political process and undermine the Cessation of Hostilities Agreement of 23 January 2014, and *further recalling* the AU PSC Communiqué dated 26 September 2015 expressing determination to impose measures against all those who would impede the implementation of the Agreement and the AU PSC Communiqué dated 29 January 2016 which recalls previous AU PSC Communiqués and press statements on South Sudan,

Further recalling the communiqué of the 28th Extraordinary Session of the IGAD Assembly of Heads of State and Government, which inter alia, invited collective action as appropriate by the States of IGAD to enact asset freezes and travel bans, and deny the supply of arms and ammunition and any other material that could be used in war and called on the AU PSC and United Nations Security Council, and the international community to render all possible assistance in the implementation of such action,

Welcoming the China-mediated "Five-Point Plan" that was agreed upon during the Special Consultation in Support of IGAD-led South Sudan Peace Process convened on 12 January 2015 in Khartoum, and *strongly urging* the TGNU to immediately implement the Five-Point Plan,

Expressing its deep appreciation for the actions taken by UNMISS peacekeepers and troop- and police-contributing countries to protect civilians, including foreign nationals, under threat of physical violence and to stabilize the security situation,

Recognizing the importance of independent and public human rights monitoring, investigation and reporting for its useful role in laying the groundwork for justice, accountability, reconciliation and healing among all South Sudanese communities,

Taking note with interest of the reports on the human rights situation in South Sudan issued by UNMISS, the Secretary-General, and the Office of the High Commissioner for Human Rights (OHCHR),

Expressing grave concern that, according to the 11 March 2016 "Report of Office of the High Commissioner for Human Rights Assessment Mission to Improve Human Rights, Accountability, Reconciliations and Capacity in South Sudan" and the UNMISS/OHCHR 4 December 2015 report "The State of Human Rights in the Protracted Conflict in South Sudan", the scale, intensity and severity of human rights violations and abuses have increased with the continuation of hostilities, that there continue to be reasonable grounds to believe that violations and abuses of human rights, including those involving extrajudicial killings, rape and other acts of sexual and gender-based violence, enforced disappearances, and arbitrary detention, as well as violations of international humanitarian law have been committed, which may amount to war crimes and/or crimes against humanity, and *stressing* the urgent and imperative need to end impunity in South Sudan and to bring to justice perpetrators of such crimes,

Welcoming the release of the AU Commission of Inquiry (AU COI) report on South Sudan and the Separate Opinion, and *recognizing* the AU COI's work in investigating and documenting violations and abuses of international human rights law and violations of international humanitarian law in South Sudan and *expressing grave concern* at the AU COI's finding that it has reasonable grounds to believe that war crimes such as murder, outrages upon personal dignity such as rape and other acts of sexual violence, and cruel and degrading treatment, targeting of civilian objects and protected property have occurred and that violations were carried out by both sides to the conflict,

Emphasizing its hope that this and other reporting will be considered, as appropriate, by the mechanisms on transitional justice, accountability, reconciliation and healing as called for in Chapter V of the Agreement, including the hybrid court and the Commission for Truth, Healing, and Reconciliation, *stressing* the importance of accountability, reconciliation, and healing among all South Sudanese communities as prominent elements of a transitional agenda, while also *taking note* of the important role international investigations, and where appropriate, prosecutions can play with respect to holding those responsible for war crimes and crimes against humanity,

Strongly condemning the use of media to broadcast hate speech and transmit messages instigating sexual violence against a particular ethnic group, which has the potential to play a significant role in promoting mass violence and exacerbating conflict, and *calling on* the TGNU to take appropriate measures to address such activity, and further *urging* all parties to desist from these actions and instead contribute to promoting peace and reconciliation among the communities,

Recognizing the important role played by civil society organizations, faith leaders, women, and youth in South Sudan, *underscoring* the importance of their participation — along with the former SPLM detainees and other political parties — to finding a sustainable solution to the crisis in the country, and concerned by efforts of some TGNU officials to limit such participation including by increased restrictions of freedom of expression,

Reaffirming all its relevant resolutions on women, peace, and security, on children and armed conflict, and the protection of civilians in armed conflict, as well as resolutions 1502 (2003) on the protection of humanitarian and United Nations personnel, resolution 2150 (2014) on the Prevention and Fight against Genocide, resolution 2151 (2014) on security sector reform, and resolution 2286 (2016) on protection of humanitarian and health-care personnel and facilities,

Recalling resolutions 1209 (1998) and 2117 (2013), and 2220 (2015) and *expressing grave concern* at the threat to peace and security in South Sudan arising from the illicit transfer, destabilizing accumulation and misuse of small arms and light weapons and *emphasizing* the importance of strengthening efforts to combat the illicit circulation of such weapons,

Recalling the Informal Working Group on General issues of Sanctions report (S/2006/997) on best practices and methods, including paragraphs 21, 22, 23, 24 and 25 that discuss possible steps for clarifying methodological standards for monitoring mechanisms,

Noting the Agreement's call for South Sudan's political leaders to establish effective leadership and to commit themselves to the fight against corruption,

Reiterating its concern at persistent restrictions placed upon the movement and operations of UNMISS, *strongly condemning* the attacks by government and opposition forces and other groups on United Nations and IGAD personnel and facilities, and the detentions and kidnappings of United Nations and associated personnel and *calling upon* the Government of South Sudan to complete its investigations of these attacks in a swift and thorough manner and to hold those responsible to account,

Determining that the situation in South Sudan continues to constitute a threat to international peace and security in the region,

Acting under Article 41 of Chapter VII of the Charter of the United Nations,

1. *Endorses* the "Agreement on the Resolution of the Conflict in the Republic of South Sudan" (the "Agreement");

2. *Welcomes* the formation of the TGNU on 29 April 2016 as a vital step towards the full implementation of the Agreement;

3. *Expresses deep concern* at the failures of South Sudan's leaders to fully implement their commitments pursuant to the Agreement, and to bring an end to the hostilities and, further, *condemns* the continued and flagrant violations of the ceasefire provisions of the Agreement, including violations as documented by the Ceasefire and Transitional Security Arrangements Mechanism;

4. *Demands* that South Sudan's leaders fully and immediately adhere to the permanent ceasefire in accordance with their obligations under the Agreement, and allow in accordance with relevant provisions of international law and the UN guiding principles of humanitarian assistance, full, safe and unhindered humanitarian access to help ensure timely delivery of humanitarian assistance to all those in need;

5. *Reiterates* that there is no military solution to the conflict;

Targeted Sanctions

6. *Underscores* its willingness to impose targeted sanctions in order to support the search for an inclusive and sustainable peace in South Sudan, including through the timely and full implementation of the Agreement;

7. *Decides* to renew until 31 May 2017 the travel and financial measures imposed by paragraphs 9 and 12 of resolution 2206 (2015), and *reaffirms* the provisions of paragraphs 10, 11, 13, 14 and 15 of resolution 2206 (2015);

8. *Reaffirms* that the provisions of paragraph 9 of resolution 2206 (2015) apply to individuals, and that the provisions of paragraph 12 of resolution 2206 (2015) apply to individuals and entities, as designated for such measures by the Committee established pursuant to paragraph 16 of resolution 2206 (2015) ("the Committee"), as responsible for or complicit in, or having engaged in, directly or indirectly, actions or policies that threaten the peace, security or stability of South Sudan;

9. *Underscores* that such actions or policies as described in paragraph 8 above may include, but are not limited to:

(a) Actions or policies that have the purpose or effect of expanding or extending the conflict in South Sudan or obstructing reconciliation or peace talks or processes, including breaches of the Agreement;

(b) Actions or policies that threaten transitional agreements or undermine the political process in South Sudan;

(c) Planning, directing, or committing acts that violate applicable international human rights law or international humanitarian law, or acts that constitute human rights abuses, in South Sudan;

(d) The targeting of civilians, including women and children, through the commission of acts of violence (including killing, maiming, torture, or rape or other sexual and gender-based violence), abduction, enforced disappearance, forced displacement, or attacks on schools, hospitals, religious sites, or locations where civilians are seeking refuge, or through conduct that would constitute a serious abuse or violation of human rights or a violation of international humanitarian law;

(e) The use or recruitment of children by armed groups or armed forces in the context of the armed conflict in South Sudan;

(f) The obstruction of the activities of international peacekeeping, diplomatic, or humanitarian missions in South Sudan, including the Ceasefire and Transitional Security Arrangements Monitoring Mechanism or of the delivery or distribution of, or access to, humanitarian assistance;

(g) Attacks against United Nations missions, international security presences, or other peacekeeping operations, or humanitarian personnel; or

(h) Acting for or on behalf of, directly or indirectly, an individual or entity designated by the Committee;

10. *Reaffirms* that the provisions of paragraphs 9 and 12 of resolution 2206 (2015) apply to individuals, as designated for such measures by the Committee, who are leaders of any entity, including any South Sudanese government, opposition,

militia, or other group, that has, or whose members have, engaged in any of the activities described in paragraphs 8 and 9 above;

Sanctions Committee/Panel of Experts

11. *Emphasizes* the importance of holding regular consultations with concerned Member States, international and regional and subregional organizations, as well as UNMISS, as may be necessary, in particular neighbouring and regional States, in order to ensure the full implementation of the measures in this resolution, and in that regard encourages the Committee to consider, where and when appropriate, visits to selected countries by the Chair and/or Committee members;

12. *Decides* to extend until 1 July 2017 the mandate of the Panel of Experts as set out in paragraph 18 of resolution 2206 (2015) and this paragraph, *expresses its intention* to review the mandate and take appropriate action regarding the further extension no later than 31 May 2017, and decides that the Panel should carry out the following tasks:

(a) Assist the Committee in carrying out its mandate as specified in this resolution, including through providing the Committee with information relevant to the potential designation of individuals and entities who may be engaging in the activities described in paragraphs 8 and 9 above;

(b) Gather, examine and analyse information regarding the implementation of the measures decided in this resolution, in particular incidents of non-compliance, with particular focus on the benchmarks outlined in paragraphs 15 and 16 below;

(c) Gather, examine and analyse information regarding the supply, sale or transfer of arms and related materiel and related military or other assistance, including through illicit trafficking networks, to individuals and entities undermining implementation of the Agreement or participating in acts that violate international human rights law or international humanitarian law, as applicable;

(d) Provide to the Council, after discussion with the Committee, an interim report by 1 December 2016, a final report by 1 May 2017, and except in the months when these reports are due, updates each month;

(e) Also to provide to the Council a report within 120 days providing analysis of the current security threats facing the TGNU, and its needs to maintain law and order in South Sudan, as well as further analysis on the role of transfers of arms and related materiel coming into South Sudan since the formation of the TGNU with respect to implementation of the Agreement and threats to UNMISS and other UN and international humanitarian personnel;

(f) Assist the Committee in refining and updating information on the list of individuals and entities subject to the measures imposed by this resolution, including through the provision of identifying information and additional information for the publicly available narrative summary of reasons for listing;

13. *Calls upon* all parties and all Member States, as well as international, regional and subregional organizations to ensure cooperation with the Panel of Experts and *further urges* all Member States involved to ensure the safety of the members of the Panel of Experts and unhindered access, in particular to persons, documents and sites in order for the Panel of Experts to execute its mandate;

14. *Requests* the Special Representative of the Secretary-General for Children and Armed Conflict and the Special Representative for Sexual Violence in Conflict to share relevant information with the Committee in accordance with paragraph 7 of resolution 1960 (2010) and paragraph 9 of resolution 1998 (2011);

Review

15. *Expresses* its intent to monitor and review the situation at 90 day intervals from the adoption of this resolution or more frequently, as needed, and *invites* the JMEC to share relevant information with the Council, as appropriate, on its assessment of the parties' implementation of the Agreement, adherence to the permanent ceasefire, and facilitation of humanitarian access, also *expresses* its intent to impose any sanctions that may be appropriate to respond to the situation, which may include an arms embargo and the designation of senior individuals responsible for actions or policies that threaten the peace, security or stability of South Sudan, including by impeding the implementation of the Agreement, or by failing to take effective and comprehensive steps to cause forces under direct or indirect control to cease military operations, acts of violence, as well as human rights violations or abuses or violations of international humanitarian law, and to enable full access for humanitarian assistance;

16. *Affirms* also that it shall be prepared to adjust the measures contained in this resolution, including by strengthening through additional measures, as well as modification, suspension or lifting of the measures, as may be needed at any time in light of the progress achieved in the peace, accountability, and reconciliation process, and in light of the implementation of the Agreement and the parties' commitments, including the ceasefire, and compliance with this and other applicable resolutions;

17. *Decides* to remain seized of the matter.